



UNITED STATES PATENT AND TRADEMARK OFFICE

cen

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/825,501	04/15/2004	Cheng Shen	SP-1285	8553
44388	7590	02/01/2008	EXAMINER	
SOLAE, LLC			PADEN, CAROLYN A	
P. O. BOX 88940			ART UNIT	PAPER NUMBER
ST. LOUIS, MO 63188			1794	
			MAIL DATE	DELIVERY MODE
			02/01/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/825,501	Applicant(s) SHEN, CHENG	
	Examiner Carolyn A. Paden	Art Unit 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 December 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 5, 7-24, 28, 30-46 and 48-50 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 5, 7-24, 28, 30-46, 48-50 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on December 21, 2007 has been entered.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 5 and 7-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Patel (6,811,804) alone or if necessary in view of Firestone.

Patel discloses a juice and soy protein beverage. In example 1, the beverages include soy protein, orange and carrot juice, canola oil and pectin. The ratio of ingredients in part B of claim 1 can be calculated from

the ingredients in Table 3. Although the ratio part C to the sum of A and B is not identical to that of the claims The pH of the beverage is disclosed at column 16, line 15 to be at pH 4. Pectin is disclosed as a stabilizing agent at column 12, lines 47-60 and column 13, lines 1-18. Alternative sources of soy protein are shown at column 8, lines 38-43. The product claims appear to differ from Patel in the recitation of the ratio of part C to the sum of A and B. But to fortify the beverage of Patel with additional oil would have been an obvious way to enhance the caloric content of the beverage. It is appreciated that the pH of the soybean protein is not mentioned the claims are directed to a beverage product. No unobvious or unexpected result is seen from the inclusion of pH or solids content of an intermediate ingredients in the finally prepared product. The claims also appear to differ in the extent of hydration of the soybean protein and high methoxyl pectin but one of ordinary skill in the art would expect the product of Patel to be hydrated because it is a beverage. It is appreciated that the specific fat or oil of the claims is not mentioned but edible oils are well known and available in the art and all are known to contain fatty acids with glycerol molecules. No unobvious or unexpected result is seen from the source of the oil in the product. Claims 16-21 appear to differ in the inclusion of an oil

with a lot of oleic acid in it but Patel provides for a variety of oils that contain a lot of oleic acid at column 7, lines 12-16, and Firestone is relied upon for support of this assertion.

Claims 24, 28 and 30-50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Patel in view of Firestone as applied to claims 1, 5, and 7-23 above, and further in view of Huang (6,887,508).

Patel discloses a juice and soy protein beverage. In example 1, the beverages include soy protein, orange and carrot juice, canola oil and pectin. The ratio of ingredients in part B of claim 1 can be calculated from the ingredients in Table 3. Although the ratio part C to the sum of A and B is not identical to that of the claims The pH of the beverage is disclosed at column 16, line 15 to be at pH 4. Pectin is disclosed as a stabilizing agent at column 12, lines 47-60 and column 13, lines 1-18. Alternative sources of soy protein are shown at column 8, lines 38-43. The claims appear to differ from Patel in the recitation of the ratio of part C to the sum of A and B. But to fortify the beverage of Patel with additional oil would have been an obvious way to enhance the caloric content of the beverage. It is appreciated that the pH of the soybean protein is not mentioned the claims are directed to a beverage product. No unobvious or unexpected result is

seen from the inclusion of pH or solids content of an intermediate ingredients in the finally prepared product. It is appreciated that the specific fat or oil of the claims is not mentioned but edible oils are well known and available in the art and all are known to contain fatty acids with glycerol molecules. No unobvious or unexpected result is seen from the source of the oil in the product. Claims 41 and 44 appear to differ in the inclusion of an oil with a lot of oleic acid in it but Patel provides for a variety of oils that contain a lot of oleic acid at column 7, lines 12-16, and Firestone is relied upon for support of this assertion.

The claims also appear to differ from Patel in the way that the product is made. Huang teaches protein stabilizing agents made from high methoxyl pectin and propylene glycol (abstract). At column 8, lines 52-65, the value of hydrating protein, such as soy protein, to a pH of greater than 5.5 is described as increasing exposure and interaction of the protein with the protein stabilizing agent. At column 4, lines 45-67, extraction of soy protein with sodium hydroxide at a pH of 7.5 to 11. Then the pH of the protein is lowered for use in foods. The concept of hydrating the protein before adding the stabilizing agent is shown at column 11, lines 45-65. Example 1 of Huang shows the preparation of a beverage formulation.

With the references of Huang before him, it would have been obvious to hydrate the protein of Patel during beverage formulation at a pH of 7 to 8 in order to solubilize and stabilize the protein with high methoxyl pectin.

The rejection of the claims under 35 USC 112 has been withdrawn in response to applicants' amendments to the claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn A Paden whose telephone number is (571) 272-1403. The examiner can normally be reached on Monday to Friday from 7 am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano, can be reached by dialing 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on

Application/Control Number: 10/825,501
Art Unit: 1794

Page 7

access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Carolyn Paden/

Primary Examiner 1794